IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

Crl.MC.No. 247 of 2007()

CC.759/2004 of JUDL. MAGISTRATE OF FIRST CLASS-II, PERAMBRA

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PETITIONER:

KOORAPURATH RAGHAVAN,
EYYAD P.O.,
UNNIKULAM,
KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS:

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1. SUB INSPECTOR OF POLICE,
BALUSSERY POLICE STATION,
KOZHIKODE.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OFKERALA,
ERNAKULAM.

BY P.P. SRI.S.U. NAZER.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 247 OF 2007

Dated this the 1st day of February, 2007

ORDER

The petitioner is the 1st accused in a prosecution, inter alia, under Sec.427 read with Sec.149 of the IPC. The trial is in progress. The Public Prosecutor wanted certain photographs to be received in evidence. He has produced those photographs before court. These photographs were not relied on as documents in the report submitted under Sec.173 of the Cr.P.C. by the police. Copies of those photographs were not furnished to the accused along with the copies of the records in the case. It is subsequently that these documents were produced in court. The Prosecutor filed an application for examination of a photographer to prove these photographs. Objections were raised by the petitioner. Overruling the objection, the learned Magistrate permitted the witness to be examined for proving those photographs already produced in court.

2. The petitioner claims to be aggrieved by the order.

What is the grievance? First of all, the learned counsel for the petitioner submits that these are not documents relied on by the Investigator in the final report under Sec.173. He further submits that no copies of those documents were furnished to the accused under Sec.207 of the Cr.P.C. at the first instance. It is by now trite that the right of the prosecution to adduce relevant evidence is not fettered, circumscribed or proscribed by the provisions of Sec.173. Of course, it will have to be ensured that such subsequent production and proof of documents/evidence does not prejudice the rights of the accused. That is the only requirement of law. In this case, I am not satisfied that the subsequent production of the documents and the examination of the witness would in any way work out prejudice against the accused. The accused will get an opportunity to cross-examine the witness and if necessary, adduce his own evidence later. At any rate, no prejudice against him can be assumed or inferred in the circumstances of the case.

3. The learned counsel for the petitioner then submits that the documents which are sought to be marked through the witness who is sought to be summoned are not admissible in evidence. They have not been received in evidence actually,

though they have been produced before the prosecution. The technical difference between the production and reception notwithstanding I find no merit in this contention because there is no reason to assume that the inadmissible documents will be received in evidence. The petitioner can always insist on a copy of the documents produced or if that be not feasible, an opportunity to peruse the documents produced before commencing cross-examination. I have no reason to assume that the learned Magistrate would compel or oblige the petitioner to cross-examine the witness who is permitted to be examined without and before giving the petitioner an opportunity to see and understand the documents which are sought to be proved through the witness summoned. No other contentions are raised.

4. In the result, this Crl.M.C. is dismissed with the above observations.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. To Judge